

**California Department of Water Resources
Oroville Division, State Water Facilities
FERC Project No. 2100**

Process Protocols

1. Introduction and Purpose

This document states the Process Protocols for relicensing the Oroville Division, State Water Facilities (Federal Energy Regulatory Commission Project No. 2100) (Oroville Facilities¹ or Project). It is intended to provide a framework for communication, cooperation, consultation, and eventual settlement among the California Department of Water Resources (DWR), the Federal Energy Regulatory Commission (FERC or Commission²), government and public agencies, federally recognized Indian Tribes, and other interested parties and organizations (collectively "Participants³") in connection with relicensing the Oroville Facilities. The Project is currently operated by DWR subject to the terms and conditions of a license issued by FERC in 1957.

1.1. Description of the Oroville Facilities

The Oroville Facilities are located on the Feather River in Butte County, California, and include the Oroville Dam and Reservoir, the Edward Hyatt Hydroelectric Powerplant, Thermalito Powerplant, Thermalito Diversion Dam Powerplant, Thermalito Forebay and Afterbay, and associated recreational and fish and wildlife preservation and enhancement facilities. The Oroville Reservoir (also known as Lake Oroville) is the principal water storage facility of the State Water Project (SWP) which conserves and delivers water to over two-thirds of California's population and almost 1,000,000 acres of farmland.

The hydroelectric facilities at the Oroville Facilities have a combined licensed capacity of approximately 762 MW. The license project boundaries of the Oroville Facilities are depicted in the Initial Information Package (IIP) prepared to facilitate relicensing.

¹ Historically, FERC has referred to the Oroville Facilities as the Feather River Project.

² FERC will participate in the relicensing process, but will not be a party to any Settlement Agreement.

³ The SWRCB is an Interested Party, not a Participant, in the relicensing process. During the relicensing process, assigned State Water Resources Control Board (SWRCB) staff will provide information and will call attention to gaps in information that will be necessary for the SWRCB to consider granting a water quality certification under section 401 of the federal Clean Water Act, but the SWRCB will not sign or negotiate the contents of any Settlement Agreement.

Additional information about the Oroville Facilities is included in the IIP, which was distributed to all requesting parties in January and February 2001.

1.2. Nature of the Relicensing Process

The existing license from FERC to operate the Oroville Facilities expires on January 31, 2007. DWR must file a notice of intent to seek a new license by January 31, 2002 and its application for a new license by January 31, 2005. On January 11, 2001, DWR received FERC approval to use the Alternative Licensing Procedures (ALP) for obtaining a new license.

FERC specified these procedures in its Order No. 596 (18 C.F.R. §4.34(i)). The ALP was adopted by FERC to:

- “(i) Combine into a single process the pre-filing consultation process, the environmental review process under the National Environmental Policy Act and administrative processes associated with the Clean Water Act and other statutes;
- (ii) Facilitate greater participation by and improve communication among the potential applicant, resource agencies, Indian Tribes, the public and Commission staff in a flexible pre-filing consultation process tailored to the circumstances of each case;
- (iii) Allow for the preparation of a preliminary draft environmental assessment by an applicant or its contractor or consultant or a preliminary draft environmental impact statement by a contractor or consultant chosen by the Commission and funded by the applicant;
- (iv) Promote cooperative efforts by the potential applicant and interested entities and encourage them to share information about resource impacts and mitigation and enhancement proposals and to narrow any areas of disagreement and reach agreement or settlement of the issues raised by the hydropower proposal; and
- (v) Facilitate an orderly and expeditious review of an agreement or offer of settlement of an application for a hydropower license, exemption or amendment to a license.” (18 C.F.R. §4.34(i)(2))

In accordance with the ALP, DWR will prepare an application and a Preliminary Draft Environmental Assessment (PDEA) in coordination with relicensing Participants. Consultation with Indian Tribes, regulatory agencies, and land management agencies leading up to the filing of the application for a new license, and environmental review of the project, will be consistent with the ALP. The PDEA will replace Exhibit E (Environmental Report) which FERC requires in a “traditional” license

application process. FERC will then use the PDEA to finalize its own National Environmental Policy Act (NEPA) review process after the application is filed.

1.3. Roles of Participants and Interested Parties in Relicensing

1.3.1. Participants and Interested Parties with Statutory Authorities

The Process Protocols do not modify rights or duties of any Participants or Interested Parties. Other Participants or Interested Parties may have restrictions not noted here. A non-exclusive list of Participants and Interested Parties with statutory authorities⁴ is:

- United States Department of the Interior
- United States Department of Commerce
- Federal Energy Regulatory Commission (FERC)
- United States Forest Service (USFS)
- State of California Department of Fish and Game (DFG)
- State of California Department of Parks and Recreation (DPR)
- Indian Tribes

Certain Participants and Interested Parties have and administer statutory authorities which may constrain their respective participation in the ALP, including an ability to negotiate or execute a Settlement Agreement, because they may have to make independent decisions about this project after a Settlement Agreement is reached.

1.3.2. FERC. FERC licenses non-federal hydropower projects located on federal lands or on waters over which Congress has jurisdiction under the Commerce Clause of the United States Constitution. Further information on FERC's role in relicensing is contained on its web site at <http://www.ferc.gov>. (See FERC's Hydroelectric Project Relicensing Handbook, dated April 2001.) FERC will not execute the Settlement Agreement because its statutory authority prohibits a pre-decisional commitment.

1.3.3. This process recognizes the unique relationship between the federal government and the Tribal governments as set forth in the Constitution, treaties, statutes, regulations, and executive documents. The principles guiding this unique relationship were set forth in the Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments, Executive Memorandum, 59 Fed. Reg. 22,951 (May 4, 1994), FERC Docket No. PL03-4-000: Order No. 635 and related Executive Orders cited therein. DWR will adhere to applicable laws and regulations and anticipates that Tribes will actively participate in settlement discussions seeking to be signatories to a final Settlement Agreement.

⁴ Further statements on statutory authorities can be found on the Oroville Facilities Relicensing web site at http://orovillerelicensing.water.ca.gov/pdf_docs/final_sd1_app-a.pdf

1.3.4. Federal Agency Statement on ALP Participation. The following is a statement provided by the National Marines Fisheries Service and the U.S. Fish and Wildlife Service describing their participation in the ALP and is not necessarily the opinion of other Participants.

1.3.4.1. “Contingencies and Limitations. This process and eventual Settlement Agreement does not commit the Parties to activities beyond the scope of their respective missions, funding and authorities. It is recognized that any federal funding needed to carry out any federal agency responsibilities under this agreement shall be subject to the availability of appropriated funds pursuant to the Anti-Deficiency Act (31 U.S.C. Section 1341).”

1.3.4.2. “The Resource Agencies assert that the current and proposed facilities of FERC Project No. 2100, including those outlined in the agreement are operating, and may continue to operate, in habitat occupied by Sacramento River spring-run chinook salmon, Central Valley steelhead and other species listed under the ESA and the California Endangered Species Act. Nothing in this agreement is intended to bind or prejudice the Resource Agencies, or otherwise limit their respective authorities, in the performance of their responsibilities under these Acts, the Federal Power Act and other applicable federal and state laws.”

1.3.4.3. “Issuance of a new license for the Oroville Project constitutes a major federal action requiring compliance with Section 7 of the ESA prior to new license issuance.”

1.3.4.4. “NMFS and Fish and Wildlife Service have made no determination, and are giving the Parties no assurances, regarding compliance of the Settlement Agreement or DWR’s operation of its FERC Project No. 2100 with the ESA.”

1.4. Participation in the Relicensing Process

1.4.1. Public Participation

The relicensing process for the Oroville Facilities, including the scoping and review of the PDEA, is open to the public and broad participation is encouraged. In October 1999, DWR sent out an informal mailer to known and potentially interested government agencies, Indian Tribes, and other interested parties and organizations to initiate a mailing list of those interested in the relicensing process. DWR will continue to update this list as other interested individuals and organizations become known or identify themselves. The list along with public notices issued by DWR and FERC will be used to furnish notice of availability of information for public review and to provide notice of public meetings. Any party that wishes to be added to the list should contact:

Sue Larsen
Department of Water Resources
Room 1623
P.O. Box 942836
Sacramento, CA 94236-0001
Telephone: (916) 651-8706
Fax: (916) 653-9372
E-mail: slarsen@water.ca.gov

1.4.2. FERC Staff Participation

FERC staff may, without prior notice, participate in formal public meetings, Plenary Group, Work Group, and other meetings in this process prior to DWR's submittal of its license application, which will be no later than January 31, 2005.

1.5. Purpose of Settlement Agreement

1.5.1. The Participants in the ALP intend to reach a written Settlement Agreement that:

- (1) will facilitate development of a new license application and will serve as a basis for the new license and regulatory approval(s) necessary for FERC's issuance of that new license,
- (2) will state the mutually acceptable resolution of Participants' disputes that arose in connection with the original license for the Oroville Facilities, and
- (3) may include on a case-by-case basis, mutually acceptable resolution of Participants' disputes that are related to the future operations of the Oroville Facilities but that are or may be considered outside of FERC's jurisdiction. The primary purpose of the Settlement Agreement is (1).
- (4) provides for enforcement of each included commitment in an appropriate forum.

1.5.2. This Process Protocol does not determine whether the Participants will enter into a single Settlement Agreement or multiple such agreements; and it uses the singular form of the term solely for ease of reference. DWR reserves the right to negotiate agreements with individual Participants on specific issues, on the understanding that such individual agreements will be contingent upon a comprehensive agreement.

1.6. Duration of Process Protocols

The Process Protocols became effective upon approval by the Plenary Group. Once approved, they replaced the Communications Protocol and became effective upon FERC's approval of DWR's request to use the ALP⁵. The Process Protocols will remain in effect until FERC notifies DWR that the PDEA and final license application have been accepted for filing with FERC as set forth in 18 C.F.R. §4.32(d). The Process Protocols may be extended by agreement among Participants.

1.7. Revision of Process Protocols

The Process Protocols may be revised as appropriate by agreement among Participants.

1.8. Reservation of Rights

1.8.1. The Process Protocols do not modify the rights or duties of any Participant, except that all Participants will make good faith efforts as provided herein to reach the Settlement Agreement described in Section 1.5.

2. Proposed Structure and Purpose

2.1. Introduction

2.1.1. DWR, State and federal agencies, Indian Tribes, local government officials and interested members of the public will actively participate in the relicensing process as the Collaborative Team. Through facilitated discussions, brainstorming, and presentation of individual Participants' interests in the Plenary and Work Groups the Collaborative Team will develop collective goals and objectives that "everyone can live with". These collective goals and objectives will then guide the Collaborative Team through the relicensing process to develop and negotiate settlement offers, and eventually enter into the Settlement Agreement described in Section 1.5.

2.1.2. Reaching a Settlement Agreement that will be a basis of the new license requires mutual understanding of interests. Such mutual understanding will require the cooperation of Participants so that meetings and other collaborative efforts are conducted in an efficient manner. Participants with similar interests are encouraged to form coalitions and choose appropriate spokespersons to represent their interests throughout the relicensing process.

⁵ On May 1, 2001, the Plenary Group adopted the Process Protocols subject to periodic review and revision.

2.2. Structure

The Collaborative Team will consist of and function at the following levels.

2.2.1 Plenary Group

Comprised of primary Representatives of Participants⁶
Keeper of the “Collaborative Dream”⁷
Provides global perspective (identifies potential conflicts and balances resource plans)
Shepherds collaborative/settlement process from beginning to end
Stays informed of Work Group progress
Reviews Work Group recommendations for potential conflicts with other Work Groups or timely pursues further evaluation
Meets Regularly

2.2.2. Work Groups

Address resource issues
Consider existing and new information
Keep Plenary Group informed
Develop recommended solutions: First Phase Studies, Second Stage Protection, Mitigation, & Enhancement Measures (PM&Es)
Make recommendations to Plenary Group
Meet regularly (more frequently than Plenary Group)

2.2.3. Task Forces

Subset of Plenary Group and Work Groups that may include members from more than one Work Group
Convene to perform studies to address specific issues that may involve more than one resource
Established to meet as needed
Make recommendations to Work Groups and/or Plenary Group

⁶ The Process Protocols use the term, “Representative,” to mean an individual who represents a Participant in the ALP. “Participant” means an agency, organization, or other individual who intends to sign a Settlement Agreement, as defined in Section 4.1.

⁷ “Keeper of the Collaborative Dream”. This phrase captures the essence of the Plenary Group’s role as shepherd for the collaborative settlement process and convener of the forum where issues are: (1) debated, (2) recommendations from Work Groups and Task Forces are considered and balanced, (3) potential conflicts are addressed, and (4) actions are taken in a comprehensive collaborative manner. The “dream” aspect of the phrase speaks to the overarching desire of each Plenary Group Participant to realize that the time and effort each Participant exerts in achieving consensus and developing a durable Settlement Agreement results in something better than would have occurred absent the Participants’ collaborative involvement in the Plenary Group.

2.2.4. Settlement Negotiation Group

Convened by the Plenary Group

Group of Participants with lead negotiation roles in settlement discussions

Consists of Representatives with authority to negotiate on behalf of

Participants who intend to execute the Settlement Agreement. In

addition, SWRCB and FERC may participate without that intent

Negotiate Settlement Agreement for the Oroville Facilities Relicensing
(Project No. 2100)

Set its procedures and schedule for meetings and meeting summaries

Give regular updates to Plenary on settlement negotiations

2.3. Purpose and Mission of Groups

2.3.1. Plenary Group. The Plenary Group will be made up of Participants representing all interests. It is the keeper of the “collaborative dream” – it is responsible for shepherding the collaborative process from the beginning to end. Since FERC’s regulatory process requires DWR to submit a license application no later than January 31, 2005, it is incumbent on the Plenary Group to maintain a schedule consistent with that requirement. To do this, the Plenary Group will establish goals and objectives; develop an approach to achieve those goals and objectives; and maintain a close linkage to the Work Groups to make sure that FERC/DWR deadlines are satisfied.

2.3.2. The Plenary Group will maintain a global perspective and work to resolve issues that may arise within and between Work Groups. The Plenary Group will review the progress of all Work Groups to consider how their recommendations respecting studies and Protection, Mitigation and Enhancement (PM&E) proposals interrelate and how they may interact (positively or negatively) with other issues. The Plenary Group will identify conflicting proposals while there is still time to reconcile differences, adjust the proposals, and provide all Participants the opportunity to discuss development of an overall mix of studies, alternatives, and, eventually, PM&E proposals.

2.3.3. The Plenary Group will rely heavily on input from Work Groups when performing its responsibilities, in particular with respect to Work Group recommendations. Responsibility for the Collaborative Team’s approval of study plans and PM&E proposals rests with the Plenary Group.

2.3.4. Work Group Recommendations. Having reached consensus⁸ on a recommendation, a Work Group will select one or more responsible Participant(s) to: (1) request placement of the Work Group recommendation on the next Plenary Group meeting agenda, (2) make arrangements for appropriate copies for the Plenary Group, and (3) describe recommendations and respond to questions from Plenary Group

⁸ See FERC Order 596 for its definition on consensus in its ALP rulemaking. (Order 596 can be found on FERC’s web site at www.ferc.gov under the topic Hydro.)

Participants. The responsible Participant(s) will report any further questions or tasks requested by the Plenary Group to their Work Group in the event the Plenary Group requires further information before giving its approval.

2.3.5. Evaluation of Work Group Recommendations. Recommendations will be discussed at Plenary Group Meetings or, if not practicable or necessary, discussions will take place at a time agreed to by the Plenary Group, but prior to a recommendation being implemented. Participants of the relevant Work Group will be invited to attend and participate at the Plenary Group meeting when the recommendation is discussed.

2.3.6. Time-Sensitive Work Group Recommendations. If a recommendation involves time-sensitive action items when it is sent to the Plenary Group, the recommendation will clearly identify a deadline (no shorter than one week from receipt of the recommendation) for questions or objections by Plenary Group Participants. If a Plenary Group Participant asks for further evaluation of a time-sensitive recommendation, it will take place promptly by telephone conference call or a special meeting, as appropriate.

2.3.7. A Work Group Participant will attend each Plenary Group meeting and brief the Plenary Group on the Work Group's progress and activities and answer any clarifying questions regarding the recommendation. The Work Group Participant will be responsible for briefing their Work Group of the discussion that occurred at the Plenary Group meeting.

2.3.8. The Plenary Group will meet regularly. It is anticipated that during the initial organizational period, the Plenary Group may need to meet monthly; however, it is expected that once established, the meetings will become less frequent.

2.3.9. Work Groups. Work Groups will be established as necessary to deal with resource issues. It is anticipated that there will be at least six Work Groups: (1) Cultural Resources, (2) Recreation and Socioeconomics, (3) Land Use, Land Management and Aesthetics, (4) Aquatic Resources (including Water Quality), (5) Terrestrial Resources, and (6) Engineering and Operations. (The Aquatics and Terrestrial Resources Work Groups will be initiated as a single Environmental Work Group.) More Work Groups might be formed or, for specific issues or studies, members of individual Work Groups may be combined to form a Task Force. Work Groups will define resource goals and objectives, develop an approach to achieve those goals and objectives, identify issues, develop study plans, establish and maintain critical paths, and resolve issues. At the beginning of the process Work Groups will focus on designing studies that will result in gathering credible scientific information relevant to decisions that are pertinent to the relicensing process; later Work Groups will focus on developing mutually agreeable PM&E proposals.

2.3.10. Work Groups will examine information necessary to resolve specific resource issues and use available and new information from relicensing studies

to propose solutions to problems or develop PM&E proposals to address issues. Work Groups will focus on a variety of potential solutions to study issues and viable PM&E measures, and will consider the expected effectiveness of the solutions.

2.3.11. Work Group meetings will be held as necessary, but they are likely to occur more frequently than Plenary Group meetings.

2.3.12. Task Forces. Task Forces will be convened at the request of the Plenary Group or Work Groups. Task Forces will coordinate with the Plenary Group, as appropriate, to perform studies requiring specialized expertise specific to individual issues or input from more than one resource area. For example, a Task Force may be organized to address an issue that relates to both aquatic resources and recreational interests. Task Forces will report results of activities directly to the Plenary Group or Work Groups. It is anticipated that Task Forces will meet as needed to gather information and resolve questions specific to individual issues that may arise within Work Groups.

2.3.13. Settlement Negotiation Group. This group will have the responsibility for negotiating a Settlement Agreement.

2.4. Structure of Settlement Negotiation Group

2.4.1. The Settlement Negotiation Group will consist of Representatives authorized by Participants to negotiate the Settlement Agreement. DWR intends that all Participants will be represented in the Settlement Negotiation Group. The Settlement Negotiation Group will do its best to develop a Settlement Agreement acceptable to all Participants.

2.4.2. The Settlement Negotiation Group will begin in 2004. DWR will prepare a Draft Offer of Settlement that will include consideration of Work Group and Plenary Group discussions. The Settlement Negotiation Group will use a single-text document approach (tracking evolving changes/edits to documents) for developing the Settlement Agreement. The Settlement Negotiation Group may establish subgroups of DWR and other volunteering Representatives to negotiate discrete issues or draft language for consideration by the Settlement Negotiation Group.

2.4.3. Caucuses of common interests are encouraged. The goal is that as many Participants in the Plenary or Work Groups as is reasonable be represented in the negotiations by Representatives in the Settlement Negotiation Group. This will promote the broadest Settlement Agreement possible in the time available with as many signatories as possible.

2.4.4. Each Participant will commit to a good faith, diligent and best effort, within each Participant's resource constraints, to reach settlement. Representatives will contribute to the progress of the negotiations to the extent feasible, recognizing a need for efficiency that takes into account resource constraints.

2.4.5. The Settlement Negotiation Group will continue work until settlement is achieved, the Plenary Group determines that the Settlement Negotiation Group's work is done, or until DWR reasonably determines that further settlement negotiations are not likely to lead to settlement. In that event, other participants may elect to proceed on their own initiative, and may adopt other protocols.

3. Communications Goals, Types, and Methods

3.1. Communication Goals

The Process Protocols have the following communication goals:

- to encourage broad public and agency participation in the relicensing process;
- to provide ample notice of meetings open to attendance by the general public;
- to provide documentation of meetings and contacts with specific groups and individuals at which action is taken or decisions are made affecting relicensing;
- to provide a mechanism for establishing the formal consultation record required for the ALP; and
- to provide a mechanism for public access to studies, meeting summaries and other components of the Public Reference File to be maintained by DWR.

3.2. Types

Both formal and informal communications will occur during the relicensing process. Formal communications will be through meetings of relicensing Participants and through formal correspondence. Informal communications are all communications other than those that occur in formal meetings or through formal correspondence.

3.3 Communication Methods

Consistent with State and federal paper reduction policies, and in accordance with the objectives of FERC Order No. 604, issued May 26, 1999, DWR intends, where possible, to transmit and receive written relicensing material in electronic format, and to publish the material on the Oroville Facilities relicensing web site. The Oroville Facilities relicensing web site can be accessed at <http://orovillerelicensing.water.ca.gov>.

In most instances, the following procedures will be used:

| <u>Document</u> | <u>Primary</u> | <u>By Request</u> |
|--------------------------------|-----------------------------|-------------------|
| Meeting notices | Web site and E-mail | Hard-copy |
| Meeting summaries ⁹ | Web site | Hard-copy |
| Meeting materials | E-mail | Hard-copy |
| Major documents | Web site and/or CD-ROM | Hard-copy |
| Correspondence | | |
| From DWR | Web site and E-mail | Hard-copy |
| From others | E-mail or disk | Hard-copy |
| Status reports | Web site with E-mail notice | Hard-copy |

Substantive correspondence relating to relicensing between DWR and other Participants and between FERC and DWR will be included in the Public Reference File and posted on the Oroville Facilities relicensing web site. Copies of correspondence between Participants and FERC shall become part of the Public Reference File described in Section 3.6 and will be posted on the Oroville Facilities relicensing web site. DWR requests that all correspondence be sent to DWR within 10 working days via E-mail or disk to facilitate such posting. Hard copies will be scanned by DWR and posted on the Oroville Facilities relicensing web site.

3.4. Meetings

3.4.1. Formal Public Meetings

DWR will convene the following formal public meetings during the relicensing process to obtain comments from the general public: (1) joint agency/public initial information/NEPA scoping meetings; and (2) a meeting to receive comments on the PDEA.

FERC will publish advance notice of the scoping meetings and meetings to receive comments on the PDEA in the *Federal Register*.

DWR will publish notice of these meetings in appropriate local and other media. In addition, DWR will post notice on its Oroville Facilities relicensing web site and provide notice of all such meetings to all Participants on the relicensing mailing list. At least 30 days advance notice of such meetings will be provided. Notice for those on the DWR mailing list will be by E-mail unless otherwise requested.

Unless otherwise specified, these meetings will be held in Butte County, California or in Sacramento, California. Summaries of these meetings will be prepared, distributed to Participants, posted on the Oroville Facilities relicensing

⁹ Includes scheduled teleconference meetings.

website, included in the Public Reference File, and included in DWR's six-month progress reports to be filed with FERC as set forth in Section 3.7.

3.4.2. Plenary Group, Settlement Negotiation Group and Work Group Meetings

3.4.2.1. Plenary Group and Work Groups consisting of relicensing Participants will be convened for the duration that the Process Protocols are in effect¹⁰. The Plenary Group will meet periodically to review progress of the relicensing process, help resolve disputes referred by Work Groups, and provide a global perspective. Work Groups will address specific resource issues such as water supply, fishery resources, recreation and cultural resources. Such meetings will be held primarily in Butte County, California, although some meetings may be held in Sacramento, California or elsewhere. Summaries of these meetings, including decisions and action items, will be posted on the Oroville Facilities relicensing web site, and included in the Public Reference File in accordance with Section 3.3. above.

3.4.2.2. DWR will attempt to schedule Plenary Group and Work Group meetings months in advance of the meeting dates, but not less than 30 days prior to a meeting, except under extraordinary circumstances. Agendas will be provided to Plenary Group and Work Group Participants at least 15 days prior to the meeting. Notice will be by electronic mail unless notice by mail is requested.

3.4.2.3. DWR will attempt to provide Plenary Group and Work Group meeting materials at least seven days in advance of the scheduled meetings to all Participants who request meeting materials. The intent is to provide meeting Participants with sufficient notice and information to facilitate meaningful participation. Specifically, Participants will have sufficient time for internal review of major policy matters before making decisions on such matters.

3.4.2.4. The Settlement Negotiation Group will establish its procedures for meeting scheduling, preparation of meeting materials, and recording meetings prior to beginning negotiations.

3.4.3. Plenary and Work Group Meeting Summaries

DWR will be responsible for preparing Plenary and Work Group draft meeting summaries to be circulated as indicated in Section 3.3. Meeting summaries will include the major issues discussed and any decisions or action items. Every effort will be made to distribute meeting summaries within 30 days of the meetings and at least 7 days in advance of the following meeting of the specific Work Group or Plenary Group. Corrections may be submitted within 15 days after distribution of the meeting summaries. Meeting summaries and revisions will be posted on the Oroville Facilities relicensing web site and included in the Public Reference File. Copies

¹⁰ Plenary and Work Group meetings are open to the public.

of the summaries and any corrections will be placed in the Public Reference File and used in the six-month progress reports to be filed with FERC (see Sections 3.6. and 3.7.).

3.4.4. Informal Communications

It is anticipated that during the course of the relicensing process there will be informal communications (1) between DWR personnel and FERC staff, (2) between various other Participants and FERC staff, (3) between DWR and other Participants, and (4) among Participants. Informal communications are all communications other than those that occur in formal meetings. Such informal communications, including caucuses during meetings, are permitted and encouraged, in order for Participants to share their perspectives on issues and identify and discuss areas of agreement and disagreement on issues.

Prior to DWR filing its formal license application, anticipated to take place between August 1, 2004 and January 31, 2005, DWR and Participants may engage in oral communications with FERC staff without prior notice to other parties.

If a person proposes to prepare and distribute to other Participants a summary of an informal communication with a FERC representative or another Participant, that person shall give the applicable FERC representative or Participant engaged in the informal communication an opportunity to review and approve the summary.

3.5. Written Communications

Substantive correspondence regarding relicensing of the Oroville Facilities between DWR and other Participants, DWR and FERC, or Participants and FERC shall become part of the Public Reference File and posted on the Oroville Facilities relicensing web site (e.g., letters from Participants regarding concerns relating to the ALP process, relicensing issues, study plans, study results, and proposed enhancements). Substantive correspondence between relicensing Participants may also be submitted for inclusion in the Public Reference File and on the Oroville Facilities relicensing web site as appropriate. Send copies to DWR at the address set forth in Section 1.4.1. If possible, all correspondence should be sent in electronic format (E-mail or disk) so that it can be posted on the Oroville Facilities relicensing web site. Participants wishing to send correspondence to FERC should reference Docket Number P-2100 and send them to:

Office of the Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Copies of all material related to relicensing the Oroville Facilities prepared by, or received by, a State or federal agency will be made available to the public in a manner consistent with the respective agency's procedure governing public records.

3.6. Public Reference File

The Public Reference File associated with relicensing the Oroville Facilities will consist of copies of written correspondence, meeting summaries, study plans, study reports, and other related documents. DWR will maintain duplicate Public Reference Files at its Sacramento headquarters and at the Oroville Public Library. The addresses are:

Department of Water Resources
Sacramento Headquarters
1416 9th Street, Room 742
Sacramento, California 95814

Oroville Public Library
1820 Mitchell Avenue
Oroville, California 95965

FERC will maintain a file of six-month progress reports and other pre-filing documents for viewing in its Public Reference Room in Washington, D.C.¹¹. FERC will also make these documents available on its E-Library web site located at <http://www.ferc.gov/docs-filing/elibrary.asp>.

Materials will be available for review and copying by any member of the public at these three locations. Paper copies from DWR's Sacramento Public Reference File will be available for 10 cents per page and from the Oroville Public Library at the prevailing copy rate.

All other requests for documents from DWR should be directed to the Sacramento Public Reference File attendant and should state the document title and date and specify FERC Project No. 2100.

3.7. Six-Month Progress Report to FERC

Pursuant to 18 C.F.R. §4.34(i)(6)(ii), DWR will provide FERC with a progress report every six months for the duration of the Process Protocols. Progress reports will include the Public Reference File log and Plenary Group and Work Group meeting summaries. Copies of the progress reports will be available to Participants and the general public at the Oroville Facilities relicensing web site or on CD-ROM, if requested.

¹¹ See FERC Order 596 for its definition on consensus in its ALP rulemaking. (Order 596 can be found on FERC's web site at www.ferc.gov under the topic Hydro.)

4. Roles, Decision Making, and Resolution of Issues

The Oroville Facilities relicensing process is a public process that is open to anyone who is interested in Oroville Facilities relicensing activities subject to the following.

4.1. Roles of Involved Parties

4.1.1. Interested Parties. Interested Parties are those agencies, Tribes, organizations or individuals that have an interest in the outcome of the relicensing of the Oroville Facilities. Each Interested Party will remain informed about and provide input regarding relicensing activities to the extent it desires.

4.1.2. Participants. Participants are a subset of Interested Parties who have chosen to actively participate in the Plenary and Work Groups in the ALP process. Such participation includes collaborative development of the record and a Settlement Agreement. Each Participant intends to negotiate and execute a Settlement Agreement as described in Section 1.5. Each participant intends to support their representative during negotiations.

4.1.3. Licensee. The Licensee is the State of California Department of Water Resources. DWR shall act as a full Participant in the relicensing process and will take the lead in developing necessary information and preparing formal documents. Working with the facilitator, DWR will propose agendas (for review, input, and changes by other Participants) for all Plenary, Work Group and Task Force meetings. Agendas are created to reflect the interests of the process; agendas are accepted at the beginning of the meeting by the Participants present. DWR has responsibility for preparing and filing the license application.

DWR is committed to supporting the collaborative process in seeking lasting agreements to major issues related to relicensing the Oroville Facilities that are acceptable to as many of the Participants as possible. However, DWR is required to file an application to relicense the Oroville Facilities with FERC no later than January 31, 2005. A dedicated effort by all Participants is required to produce a Settlement Agreement (as described in Section 1.5.) by the required filing date.

4.1.4. Consulting Team. The Consulting Team includes scientific and recreational consultants, engineers, regulatory specialists, and public involvement and meeting facilitation consultants retained by DWR. The Consulting Team provides specialized expertise in the foregoing areas. Members of the Consulting Team will not have the authority to bind DWR or any other Participant to any agreements.

The Consulting Team has an obligation to support the collaborative process. The Consulting Team will assist in carrying out study plans developed by the Work Groups and the Plenary Group¹². The Consulting Team will also assist with developing draft documents for Work Group and Plenary Group consideration, scoping documents, draft study plans, reports and application proposals.

4.1.5. Facilitator. The facilitator has a primary role of promoting the success of the collaborative process. The facilitator will help Participants identify goals, identify issues, develop and maintain critical paths, accomplish creative problem solving, and reach resolution of issues. The facilitator will manage the Plenary Group and Work Group meetings in order to meet the overall objectives of the collaborative process. The facilitator's role is to help Participants reach a written Settlement Agreement, supported by DWR and other Participants, as described in Section 1.5. The facilitator will adopt a proactive leadership style as the champion for the Oroville Facilities relicensing process; the facilitator works for "the process" and no particular agency or interest group. For large meetings, such as Plenary Group meetings, two facilitators may be used; the back-up facilitator used mainly for identifying order of requests to address those present.

4.2. Composition of Plenary Group and Work Groups

Each Participant will identify a primary Representative(s) for participation in the Plenary Group and each Work Group or Task Force in which it has an interest. A current roster will be maintained for the Plenary Group and each Work Group. DWR will actively seek participation from other Participants to ensure broad and balanced representation in both the Plenary Group and the Work Groups.

4.3. Responsibilities of Participants and their Representatives

4.3.1. Attendance. Each Representative will make a good faith effort to attend meetings and inform the facilitator in advance of any absence at a meeting or any change in representation. Each Representative will identify a secondary Representative of his or her Participant, as appropriate. The Collaborative Team may provide teleconference participation, as appropriate.

4.3.2. Agendas. Each Representative will assist the facilitator and DWR in developing meeting agendas and adhering to them. A Representative who desires to have an item added to a meeting agenda shall follow the protocol established in Section 4.5.

4.3.3. Preparation. Each Representative and others will come prepared for meetings having reviewed all previously distributed material relating to the meeting agenda. Each Representative who is new to a given group will be responsible to be

¹² No individual can drive the process by merely requesting studies and expecting them to be performed. Study requests should include a basis for the study and be relevant to the relicensing process.

briefed by a prior Representative of his or her Participant, or another Participant. Such catch-up briefing will be outside of the group meetings.

4.3.4. If a Representative would like the Plenary Group or a Work Group to consider a specific proposal, it is the responsibility of that Representative to prepare and provide whatever written material would be useful to the Plenary Group or Work Group and proceed in accordance with Section 4.5.

4.3.5. Participation. Each spokesperson will abide by the adopted ground rules presented in Attachment 1, as well as the specific procedures adopted by a given Work Group Task Force, or the Settlement Negotiation Group.

4.3.6. Each Representative is expected to be a willing contributor at meetings, to communicate actively and succinctly (listen, don't interrupt, communicate early, no side conversations, be clear and concise, suggest solutions), to share all necessary factual information, and to strive for consensus on a timely basis. Each Representative is expected to be open-minded, to listen to others, to respect others' points of view, to be direct and considerate, show respect for other Representatives, and be willing to explain their concerns to others.

4.3.7. Implementing Process Protocols. Each Representative is responsible for implementing the Process Protocols to contribute to the success of the collaborative process. Such implementation includes making efficient use of meeting time, mutual respect in discussion, a willingness to speak up if another Representative appears to be acting inconsistently with the Process Protocols, and a corresponding willingness to be corrected in like manner. Any level of the Collaborative Team may elect to assign the function of timekeeping or process observer to one or more Participants in a given meeting, if appropriate, to assure effective implementation of these Process Protocols.

4.3.8. Authority. Each Representative will have authority to undertake such representation. The Representative will ensure that the decisional authority of the Participant is briefed on an on-going basis about the activities of the Oroville Facilities relicensing process, the issues being addressed, and possible solutions to those issues. The Representative will incorporate the input they have received from their internal discussions into their participation at the Plenary Group and/or Work Group level. When the Plenary Group or a Work Group identifies a viable solution and tries to determine whether there is consensus on a proposed recommendation, each Representative other than FERC or SWRCB will state whether (1) he or she can live with the solution, (2) he or she thinks that the Participant can live with the solution, or, (3) he or she needs further authority from the Participant before a decision is made. If the Representative has stated he or she can live with the solution, he or she will favorably present the solution as a viable approach for his or her organization when briefing other Representatives, including the decisional authority of the Participant. Participants recognize that in some cases, a Participant may not make a decision on a

particular issue until the final package or terms of the Settlement Agreement is determined.

4.3.9. Assignments. Each Representative in a Work Group will volunteer to work on outside-of-the-meeting assignments (following up on specific discussions, preparing proposals, laying ground work for future discussion), as appropriate. In some instances, DWR may provide draft materials for Work Group consideration. Representatives will complete assignments on schedule or explain the basis for any delay.

4.4. Decision Making

4.4.1. Consensus. To the extent possible, Participants in the Plenary and Work Groups will resolve issues through consensus – where Participants (including DWR) can live with the decision being made.¹³ In this relicensing, the Process Protocols adopt FERC’s definition in its ALP rulemaking wherein consensus is defined as the (weight of) overriding opinion. Participants may be asked to “live with” something that is not their preferred ideal, if most Participants believe it is a fair decision, considering the many competing interests. The term “consensus-based approach” refers to a voluntary process in which Participants seek a mutually acceptable resolution of their differences with the overarching goal of developing a durable Settlement Agreement on all resource issues associated with the Oroville Facilities relicensing process.

The facilitator will work with the Plenary Group and all Work Groups throughout the relicensing process and may communicate separately with disputing parties for the purpose of reducing tension and achieving agreement on a process for resolving issues. To determine whether consensus exists, the facilitator will use a negative polling technique. In the event that minority dissenting opinions are unable to be accommodated within a proposed decision, the minority dissenting opinions will be recorded in an appropriate manner, including the meeting summaries. The decision making process in settlement negotiations is discussed in Section 4.4.2. below.

4.4.2. Execution of Settlement Agreement. While a consensus-based approach will be used in the Settlement Negotiation Group, the decision whether to execute the Settlement Agreement is individual to each Participant. Thus, the decision about whether to approve the Settlement Agreement will not be made by the Plenary Group. All Participants, as individuals or organizations, will be encouraged to sign the Settlement Agreement. While the Participants recognize that the Settlement Agreement may not be unanimous, they commit to accommodate the represented interests to the greatest extent possible.

4.4.3. Dispute Resolution. On an as-needed basis, the facilitator will use a variety of dispute resolution techniques (including mediation) to work through difficult

¹³ See FERC Order 596 for its definition on consensus in its ALP rulemaking. (Order 596 can be found on FERC’s web site at www.ferc.gov under the topic Hydro.)

issues. Participants will use an escalation process whereby they first strive to resolve conflicts that arise within the group where the conflict originates. If Participants fail to reach resolution at the initial level, by mutual agreement the affected Participants can elevate the dispute to the next level. For example, a conflict originating within a Work Group that is not resolved at the Work Group level may be elevated to the Plenary Group for resolution. If the Plenary Group is unable to achieve resolution, DWR will seek resolution with the appropriate regulatory agency(ies), excluding FERC, and report back to the Plenary Group. As a last resort, if the issue is not resolved in this manner, the Plenary Group may file a request with FERC to resolve the disagreement according to the dispute resolution provisions of 18 CFR 4.34(i)(6)(vii). The Settlement Negotiation Group will determine its own dispute resolution procedures.

4.5. Other Process Issues

4.5.1. Requests to Present Items to the Plenary Group, Work Group, or Task Force. During the course of the relicensing process Participants may wish to present a proposal related to relicensing the Oroville Facilities. The procedure for making such a request would be during the “Action Items, Next Meeting and Next Steps” section of the agenda for the desired Plenary Group, Work Group or Task Force meeting. The Representative of that Participant should provide a description of the proposal and its relevance to the relicensing process and/or use of existing project facilities or lands. Representatives will discuss the request, ask questions, and decide whether the proposal is relevant. Representatives should provide direction as to time to be allotted for the presentation and consider materials to be presented and/or distributed at the meeting. The item would then occur on the agenda issued by DWR as provided in Section 3.4.2.2. and Section 4.3.2. above. Providing handouts (large photos, maps, etc.) and other written material to Representatives at the meeting will be determined in advance.

4.5.2. A Representative wishing to present a proposal believed to be subject to extraordinary circumstances or “time-sensitive” issues, should contact the facilitator to discuss the appropriateness of the proposal and urgency of presenting it to the Plenary Group, Work Group, or Task Force. The facilitator, in consultation with other affected Participants would consider the request in accordance with Section 4.3.2. above.

4.5.3. Identifying Collaborative Process Breakdown. Process breakdown is not deadlock on a single issue or resource area, but is a breakdown of the whole collaborative process. Breakdown would be if the weight of opinion of the Participants is that the process has become a waste of their valuable time and resources and that the public interest might be better served under the circumstances of FERC directing completion of the pre-filing process and further steps required of DWR. At such time, DWR and the Participants will review and consider the entire process and attempt to re-establish and maximize balanced participation to get the collaborative process back on track.

4.5.4. Brainstorming. Representatives will be encouraged to “brainstorm” a variety of solutions to specific issues. When a Representative identifies possible solutions it is on behalf of the Work Group, not their individual organizations.

4.5.5. Tracking Issues and Resolutions. DWR will track the progress of Work Groups by maintaining an annotated list that identifies specific issues, status of the issues, and resolutions. While a Participant will not be precluded from reopening a resolved issue, Representatives will make every effort to move forward once decisions have been made and to only request that a Work Group revisit decisions in limited situations. No Participant or represented organization is bound by any preliminary agreements on individual issues, although all Participants recognize that such preliminary agreements are the necessary basis for reaching the written Settlement Agreement described in Section 1.5. However, Participants may enter into binding agreement(s) providing for implementation of specific PM&E measures in advance of the Settlement Agreement described in Section 1.5. or FERC’s issuance of a new license.

4.5.6. Information

4.5.6.1. Participants will have access to all documents developed during the relicensing process. DWR and all Participants will distribute necessary information on a timely, equal and open basis. Information developed during the relicensing process will be accessible to the public as required by the Public Records Act (California Gov. Code §6250 et seq.) or other applicable sunshine law.

4.5.6.2. Some information may be confidential under California or other applicable law. An example is information on Native American graves, cemeteries, and sacred places. It is the responsibility of a Representative providing information that is confidential under applicable law to identify the information and inform the group. Representatives may be requested to sign a confidentiality agreement prior to receiving the confidential information. All Participants will abide by such a confidentiality agreement and applicable law pertaining to confidential information.

4.5.6.3. To the extent that non-confidential data or information is draft, preliminary or otherwise qualified, and if Participants use such data/information outside of the context of the Oroville Facilities relicensing process, they will appropriately qualify the data/information.

4.5.6.4. The Oroville Facilities relicensing process will involve negotiations of disputed issues in an effort to reach a Settlement Agreement. Settlement negotiations will be confidential to the extent permitted by law. Confidential settlement communications will not be used as evidence, admission, or argument in any proceeding.

4.5.6.5. Participants agree that they will not intentionally violate these Process Protocols, and will act in good faith. Participants agree to abide by this intent to the best of their abilities. During the settlement negotiations, Participants will communicate with their respective principals/decision makers in their organization or caucus/constituency to assure that the negotiator has the necessary authority and is proposing appropriate commitments on behalf of their organization or caucus/constituency, except as otherwise required by law. The Participants will only furnish confidential information to their principals/decision makers, employees, officers, directors, agents, consultants, and advisors who need to have access to such information in order to facilitate settlement. As a condition to such disclosure, the Participants will inform any recipients of confidential information about the confidential nature of the information and will be responsible for any breach of these Process Protocols.

4.5.6.6. All Participants will remain bound by the confidentiality provisions of these Process Protocols as they apply to the settlement negotiation process beyond the termination of the settlement negotiations process and the Oroville ALP process.

4.5.6.7. Communications between Plenary Group and Settlement Negotiation Group. The Settlement Negotiation Group, through DWR, will provide status reports to the Plenary Group for its comments or guidance. Updates to the Plenary Group will be highlights of topics discussed in settlement negotiations, and will not include details of specific tentative agreements. Plenary feedback will be reported to the Settlement Negotiation Group. However, the Settlement Negotiation Group Participants agree that the Plenary will not be a second forum for further negotiation. The substance of any such report shall be reviewed by the Settlement Negotiation Group before submission to the Plenary Group.

4.5.7. Media Relations. Since Plenary Group and Work Group meetings are open to the public media representatives can be expected to attend and will have access to all non-confidential documents developed during the relicensing process. In addition, DWR intends to prepare quarterly newsletters to update interested members of the public and the media on the relicensing process. Participants understand that “debating the process in the media” can undermine the collaborative process. Participants will determine appropriate stages at which to formally update the media on the progress of the relicensing process and will fashion such updates as a group. Participants agree to represent the collaborative process to the media in a balanced manner and to notify the Plenary Group of any individual Participant’s media contact.

Attachment 1

Ground Rules for Plenary and Work Group Participants

- Actively participate – commit to success of the process
- Respect others
- Be brief and prepared
- One person speak at a time
- Oroville Facilities relicensing focus
- Listen to each other
- Leave “baggage” at the door
- Communicate interests, not positions
- Help involve all
- Seek solutions for all – solving challenges rather than winning battles
- No “gunny sacking” – raise concerns early

Ground Rules for Facilitator

- Help group accomplish objectives
- Help guide discussion
- Enforce Participant ground rules
- Help involve all
- Ask “why” to clarify
- Manage time
- Track actions, next steps, deadlines

Ground Rules for Settlement Negotiation Group (To be determined by the Settlement Negotiation Group)

Attachment 2

Definitions of Terms

ALP – Alternative Licensing Process. An alternative to the traditional way of licensing hydroelectric projects that must be approved by FERC under 18 CFR § 4.34 (i). An applicant requesting to use an ALP must demonstrate that a reasonable effort has been made to contact all potential stakeholders, and that a consensus exists that use of the ALP is appropriate under the circumstances

Caucus/Constituency – A group of Participants sharing a common interest or interests in the relicensing process and settlement negotiations

Collaborative Team, Cooperative Team, Plenary – A stakeholder group that works jointly to reach consensus on relicensing issues. Sometimes consensus results in an Offer of Settlement

Confidential – Information transmitted with the expectation that it will not be made public

Consensus – Participants (including DWR) can live with the decision being made. In this relicensing, the Process Protocols adopt FERC's definition in its ALP rulemaking wherein consensus is defined as the (weight of) overriding opinion. Participants may be asked to "live with" something that is not their preferred ideal, if most Participants believe it is a fair decision, considering the many competing interests. The term "consensus-based approach" refers to a voluntary process in which Participants seek a mutually acceptable resolution of their differences with the overarching goal of developing a durable Settlement Agreement on all resource issues associated with the Oroville Facilities relicensing process.

Consulting Team – Consultants hired by DWR to work on the Oroville Relicensing.

Dispute Resolution – Resolution of a dispute between Parties, Participants, Representatives, etc.

Facilitator – Person who has a primary role of promoting the success of the collaborative process. The facilitator will help Participants identify goals, identify issues, develop and maintain critical paths, accomplish creative problem solving, and reach resolution of issues. The facilitator will manage the Plenary Group and Work Group meetings in order to meet the overall objectives of the collaborative process. The facilitator's role is to help Participants reach a written Settlement Agreement, supported by DWR and other Participants, as described in Section 1.5. The facilitator will adopt a proactive leadership style as the champion for the Oroville Facilities relicensing process; the facilitator works for "the process" and no particular agency or interest group.

FERC – Federal Energy Regulatory Commission

Formal Communications – Communications through meetings of relicensing Participants and through formal correspondence.

Forum(s) – A meeting place for discussion

Informal Communications – All communications other than those that occur in formal meetings or through formal correspondence

Interested Party(ies) – Parties with an interest in the relicensing process.

Negative Polling – Technique to determine consensus whereby the facilitator asks Participants if they can all live with the decision being made, and unless a Participant objects, he or she declares a consensus is reached.

Negotiator – Member of Settlement Negotiation Group

NOAA Fisheries – National Oceanic and Atmospheric Administration Fisheries Department

Participant – An agency, organization, or other individual who intends to sign a Settlement Agreement as defined in Section 4.1

Parties – People or groups of people who are interested in a proposed action because of ownership, statutory responsibility, or because the proposed action could directly or indirectly affect their interests

PDEA – Preliminary Draft Environmental Assessment

Principals, Decision makers, Employees, Officers, Directors, Agents, Consultants, and Advisors – Those who need to have access to confidential information in order to facilitate settlement for parties, caucuses or organizations they advise, represent, or make decisions on behalf of.

Representative – An individual who represents a Participant in the ALP

Settlement Negotiation Group - Group of Representatives authorized by Participants to negotiate the Settlement Agreement. DWR intends that all Participants will be represented in the Settlement Negotiation Group. The Settlement Negotiation Group will do its best to develop a Settlement Agreement acceptable to all Participants.

Settlement(s) – One settlement or several settlement agreements based on specific issues.

Statutory Conditioning Authorities, Mandatory Conditioning Authorities, Recommending Authorities – Federal or state agencies and affected tribes that are authorized by statute to mandate and/or recommend hydropower license conditions to FERC. Mandatory

conditioning agencies such as DOI, NMFS, FS, or state water quality agencies and some tribes, for example, are authorized under the FPA or the Clean Water Act (CWA) to set mandatory conditions, which must be included in any license issued by the FERC. (See Sections 4(e), 18, and 30(c) of the Federal Power Act (FPA) and 401 of the CWA. Agencies and affected tribes may also make recommendations to FERC for inclusion of conditions in hydropower licenses. Pursuant to FPA Section 10(a), FERC must consider the recommendations of federal and state agencies and affected tribes exercising administration over relevant resources affected by the project. Pursuant to Section 10(j) of the FPA, NMFS, DOI and state fish and wildlife agencies are also authorized to make recommendations concerning fish and wildlife to FERC for inclusion in hydropower licenses.

Substantive Correspondence – Formal correspondence important to the relicensing

SWRCB – State Water Resources Control Board

Task Force – A forum which is a subset of the Plenary Group and Work Groups that may include members from more than one Work Group, convenes to perform studies to address specific issues that may involve more than one resource, and makes recommendations to Work Groups and/or the Plenary Group.

Work Group – A forum for addressing resource issues, considering existing and new information, keeping the Plenary Group informed, developing recommended solutions for First Phase Studies, Second Stage Protection, Mitigation, & Enhancement Measures (PM&Es), and making recommendations to the Plenary Group. Meets regularly (more frequently than Plenary Group).